

U.S. Department
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**United States
Coast Guard**



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DEPARTMENT OF TRANSPORTATION

U. S. COAST GUARD

STATEMENT OF CAPTAIN F. J. GRADY

MARINE PILOTAGE

HOUSE OF REPRESENTATIVES

COMMITTEE ON MERCHANT MARINE AND FISHERIES

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

5 JUNE 1991

CAPTAIN FREDERIC J. GRADY III

U.S. COAST GUARD

Captain Grady is Chief, Merchant Vessel Personnel Division, U.S. Coast Guard Headquarters, Washington, DC. He reported to this assignment during August 1986. His previous assignment was Chief, Port and Environmental Safety Division.

Captain Grady graduated from Massachusetts Maritime Academy in 1961. He entered the Coast Guard and graduated from Officer Candidate School at Yorktown, Virginia, in 1963.

Captain Grady has spent the majority of his 28 years Coast Guard service in the Marine Safety program. His previous field assignments include Marine Inspection Offices Los Angeles/Long Beach, California; Portland, Maine; Albany, New York; Jacksonville, Florida; and on the Ohio River at Marine Safety Office Huntington, West Virginia. Captain Grady's Coast Guard sea duty includes ocean station patrols in the North Atlantic and service in Vietnam.

In his present assignment he is responsible for managing the Coast Guard program of establishing manning standards for all U.S. inspected vessels, administering federal pilotage activity, establishing qualification and standards for all licensed and unlicensed maritime personnel, and maintaining seaman's records. Captain Grady is also head of the U.S. delegation to the International Maritime Organization sub-committee on Standards of Training and Watchkeeping.

OPENING STATEMENT
OF
CAPTAIN F. J. GRADY
BEFORE
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
JUNE 5, 1991

Good morning, Mr. Chairman. I am Captain F. J. Grady, Chief of the Merchant Vessel Personnel Division at U.S. Coast Guard Headquarters. Thank you for the opportunity to appear before this subcommittee to discuss marine pilotage, a subject that is not widely understood.

Pilotage was introduced into the American Colonies soon after their founding. By the time the United States was formed, many States where maritime commerce flourished had established pilotage systems regulated in accordance with the laws of each individual State. As they implemented a new Federal government in accordance with the Constitution, one of the important considerations facing the First Congress was determining which functions of government, including pilotage, would be exercised by the Federal government and which would remain with the States.

The Commerce Clause of the Constitution grants to the Federal government the power to regulate interstate and foreign commerce,

but in an amendment to the Lighthouse Act of August 7, 1789, Congress left to the States the power to regulate marine pilots. The language of that Act included the phrase "until further provision is made by Congress." Since 1789, Congress has "acted" in several areas of pilotage including the "Act of February 28, 1871," which established federal authority regarding U.S. vessels enrolled and licensed to engage in coastwise trade.

This 1871 Act, and the Great Lakes Pilotage Act of 1960 are the only major changes to the Lighthouse Act of 1789. The 1871 Act, now codified as 46 U.S.C. 8502 (a) (previously 46 U.S.C. 364), placed U.S. coastwise seagoing vessels (enrolled vessels) under Federal authority, while leaving foreign vessels and U.S. vessels on register (foreign trade) under State authority. Therefore, there are really two pilotage systems in the United States -- a Federal system and a State system. This dual system of pilotage has worked reasonably well over the years. While there are two main classifications of pilots -- State pilots and Federal pilots -- there are a number of different types of pilots under the Federal label:

1. Independent Federal First Class Pilots - These are individuals who are independent of the vessel, and provide pilotage services at the request of U.S. coastwise seagoing vessels operating in the domestic trade. In most cases they are members of an association, and they operate in much the same way as the State pilots.

2. A Federal First Class Pilot may also serve concurrently as a member of the vessel's regular complement. The Federal pilotage requirement may be satisfied by a deck officer holding a first class pilotage endorsement for the route.

3. Individuals acting as pilots - These are individuals who are serving as regular members of the complement of the vessel who also meet certain additional qualification requirements, including 4 round trips over the route to be traversed for self-propelled vessels of not more than 1,600 gross tons, and 12 round trips for tank barges of not more than 10,000 gross tons. These individuals do not hold a first class pilot's license or endorsement.

4. U.S. Great Lakes Registered Pilots - This category was created by the Great Lakes Pilotage Act of 1960 (46 U. S. C. Chapter 93), and these individuals serve exclusively on the Great Lakes. They hold first class pilot's licenses and are also registered by the Coast Guard to provide pilotage services to vessels engaged in the foreign trade into and out of the Great Lakes (excluding trade between the U.S. and Canada exclusively within the Great Lakes).

5. Great Lakes First Class Pilots - These individuals serve as deck officers on U.S. vessels operating exclusively within the Great Lakes (these vessels are commonly referred

to as "Lakers"). The Great Lakes are considered pilotage waters by regulation, not by statute. The officers on the "Lakers" have a Great Lakes master's or mate's license in addition to their Great Lakes first class pilot's endorsement.

The basic pilotage statute has remained substantially unchanged since 1871, but pilotage regulations have been under continuous amendment for the past 5 to 10 years.

It would be appropriate here to provide some background on tank barge pilotage. The 1871 Act (originally codified at 46 U.S.C. 364), now found at 46 U.S.C. 8502 (Federal Pilotage Statute), stated that coastwise seagoing steam vessels not sailing under register shall, when underway except on the high seas, be under the direction and control of pilots licensed by the Coast Guard. The old 46 U.S.C. 391a, which dates back to 1936, defined tank barges as a type of steam vessel. When read together, those two former statutes required pilots on tank barges.

It was not widely known that pilots were required on tank barges until 1981 when the decision in the *Moran Maritime Associates vs. U.S. Coast Guard* (D.C. D.C. 1981, 526 F. Supp. 335, Affirmed 679 F. 2d 261, 220 U.S. App. D.C. 84) court case brought attention to that fact. Therefore, for 45 years (1936-1981) tank barges did not take pilots.

In August 1981, the Towing Safety Advisory Committee (TSAC) submitted a recommendation to the Coast Guard to permit the operators of tank barges to be authorized to serve as pilots in order to satisfy the legal requirement. The Coast Guard acted on the TSAC recommendation by publishing a Supplemental Notice of Proposed Rulemaking in January 1983, proposing the concept that a master, mate, or operator may be authorized to serve as a pilot on a tank barge if certain additional qualification requirements were met. Public hearings were held, numerous comments were received, and a final rule was published in June 1985 authorizing masters, mates, or operators to serve as pilots on tank barges totaling not more than 10,000 gross tons, provided they met certain additional qualification requirements, including 12 round trips over the route to be traversed (46 CFR 15.812 - Pilots).

This "serving as pilot" concept was also adopted for self-propelled vessels up to 1600 gross tons with a 4 round trip requirement.

Not all tank barges are subject to pilotage. Federal Pilotage Statute 46 U.S.C. 8502 applies to "a coastwise seagoing vessel." The Coast Guard considers a coastwise seagoing vessel to be one that proceeds beyond the Boundary Line (a line used to indicate when a vessel is coming in from "outside" (from sea), or going to proceed "outside" (toward sea)).

The Federal pilotage statute (46 U.S.C. 8502) states that a coastwise seagoing vessel shall be under the direction and control of a pilot licensed by the Coast Guard if the vessel is underway, not sailing on register, not on the high seas, and subject to inspection under Part B or Chapter 37 (Tank Barges) of Title 46 U.S.C.

Regarding what waters are pilotage waters, the Coast Guard interprets the statutory phrase "not on the high seas" to be the outer limits of the Territorial Sea (the 3 mile limit). Therefore, Federal pilotage waters are the navigable waters of the United States.

There are certain vessels that do not have a pilotage requirement under 46 U.S.C. 8502. They are inland vessels, those that do not proceed beyond the Boundary Line. However, the Coast Guard may require a pilot on inspected inland vessels under the manning statute (46 U.S.C. 8101). Examples of inland vessels that have a pilotage requirement are the Mississippi Queen, the Delta Queen, and many ferries, such as the Staten Island Ferries.

46 U.S.C. 8501(a) states that, except as otherwise provided, pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States.

46 U.S.C. 8501(d) provides that a State may not adopt a regulation or provision that requires a coastwise vessel to take a State pilot if the vessel is self-propelled and subject to inspection under Part B, or subject to inspection under Chapter 37 (tank barges) of Title 46 U.S.C.

As mentioned earlier, foreign vessels and U.S. vessels operating on register (foreign trade) are under State authority. However, the laws in some States permit these vessels to traverse pilotage waters without a State pilot, provided the vessel pays at least some percentage of the pilotage fee.

46 U.S.C. 8503 authorizes the Coast Guard to require a Federal pilot on self-propelled vessels when a pilot is not required by State law. A notice of proposed rulemaking was published on February 19, 1991, in the Federal Register (56 FR 6598) proposing this type of action in the States of Oregon and Washington. The comment period closed on March 21, 1991, and the Coast Guard is in the process of evaluating the comments.

46 U.S.C. 8502(a) refers to a "coastwise seagoing vessel" as the vessel that requires a Federal pilot. That phrase has not been defined in the pilotage regulations, and its meaning is not clear from the legislative history. The Coast Guard is presently attempting to define a "coastwise seagoing vessel" for pilotage purposes.

The Coast Guard published a supplemental notice of proposed rulemaking on June 6, 1988. It proposed to define a coastwise seagoing vessel for pilotage purposes as a vessel that is authorized by its Coast Guard issued Certificate of Inspection (COI) to proceed beyond the Boundary Line specified in the 46 CFR Part 7. Under this alternative, if the vessel's COI authorizes it to proceed beyond the Boundary Line, pilotage requirements would apply whenever the vessel operates on U.S. navigable waters. If the vessel's COI does not authorize it to proceed beyond the Boundary Line, pilotage requirements would not apply. In written comments received from the American Waterways Operators, the Towing Safety Advisory Committee, and others, an alternative definition of coastwise seagoing vessel was suggested. They recommended that a coastwise seagoing vessel be defined as a vessel that is authorized by its COI to proceed beyond the Boundary Line, and whose movement in pilotage waters relates to a voyage in which the vessel has crossed or will cross the Boundary Line. This alternative definition ties pilotage requirements to the voyage on which the vessel is engaged. On those voyages crossing the Boundary Line, a pilot would be required, and on those voyages not crossing the Boundary Line, there would be no pilotage requirement. This rulemaking effort remains under review to resolve the complicated issues submitted by the commenters. An additional supplemental notice is planned to address these comments.

Additionally, the National Research Council has commenced a comprehensive assessment of technological changes affecting ship navigation and piloting. The assessment was requested by the Coast Guard, and is expected to be completed within the next 18 months. We hope to receive some useful recommendations from that study.

This concludes my prepared remarks. If there are any questions, I will be happy to answer them.